

## 46 Am. Jur. 2d Judges § 170

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### Judges

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### IX. Disqualification to Act in Particular Case

#### C. Remedies and Procedure

#### 2. Time for Objection

## § 170. Time limitations on objecting to judge imposed by statute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#) 51(2)

### A.L.R. Library

[Time for asserting disqualification of judge, and waiver of disqualification, 73 A.L.R.2d 1238](#)

### Forms

Forms relating to time and disqualification of judge, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

The time within which an objection to a judge must be made may be fixed by statute<sup>1</sup> or by court rule;<sup>2</sup> however, the time fixed by statute may not be limited by a local court rule.<sup>3</sup> A statute governing recusal in a specific type of case takes precedence over a more general statute.<sup>4</sup>

Pursuant to various statutes and court rules, or their interpretation by the courts, an objection must be made within a specified time prior to the hearing or trial date;<sup>5</sup> before a hearing on the matter has commenced;<sup>6</sup> prior to the court making any ruling involving discretion;<sup>7</sup> in jurisdictions that have a master calendar rule, when the case is assigned as a ready case to a ready room;<sup>8</sup> or within a specified time after a party discovers facts that require recusal.<sup>9</sup>

The basis for a motion for the recusal of a trial judge accrued, and the five-day limitations period began to run, when the principal of a citizen's group knew that the trial judge would not excuse the principal from the principal's discovery obligations based on a "legal emergency."<sup>10</sup> For purposes of youth court proceedings in the district court, the statutory 10-day period in which to file a motion for substitution of the district judge begins to run upon the youth's first appearance in the proceedings under the Youth Court Act.<sup>11</sup> Likewise, a husband's motion to disqualify a circuit judge was timely in an indirect criminal contempt case arising from a marital dissolution case where the husband filed the motion within 10 days of the date on which the indirect criminal contempt case was transferred to the circuit judge, and the husband could not have filed the motion any earlier because the circuit judge was not presiding over the indirect criminal contempt case until the case was transferred to the circuit judge.<sup>12</sup>

Even if otherwise within statutory time requirements, the motion still should be filed at the earliest practical moment after discovering the alleged prejudice;<sup>13</sup> however, a statutory time requirement does not contemplate a situation in which a party cannot know the basis of the disqualification until after a motion is no longer timely.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Removal to federal court twenty days after service of complaint tolled thirty-day period to file motion for substitution of judge, and, thus, motion was timely filed on day that state court clerk received notice that federal court had ordered remand and returned the original state court documents. 28 U.S.C.A. §§ 1446(d), 1447(c); Mont. Code Ann. § 3-1-804(1)(a). *Sage Financial Properties, LLC v. Fireman's Fund Insurance Company*, 2020 MT 47, 458 P.3d 998 (Mont. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 *Rohde v. TRW Real Estate Loan Services, Inc.*, 836 S.W.2d 465 (Mo. Ct. App. E.D. 1991), retransferred to Mo. Ct. of Appeals, (Sept. 15, 1992) and opinion adopted and reinstated after retransfer, (Sept. 28, 1992).
- 2 *Birt v. State*, 256 Ga. 483, 350 S.E.2d 241 (1986); *Jones v. Jones*, 117 Idaho 621, 790 P.2d 914 (1990).
- 3 *Hordyk v. Farley*, 94 Ariz. 189, 382 P.2d 668 (1963).
- 4 *In re Termination of Parental Rights to Genesis M.*, 2005 WI App 57, 280 Wis. 2d 396, 694 N.W.2d 458 (Ct. App. 2005).
- 5 *Castano v. San Felipe Agricultural, Mfg., & Irr. Co.*, 147 S.W.3d 444 (Tex. App. San Antonio 2004).
- 6 *Estate of Johnson v. Kranitz*, 168 S.W.3d 84 (Mo. Ct. App. W.D. 2005).
- 7 *Tye v. Tye*, 121 Wash. App. 817, 90 P.3d 1145 (Div. 3 2004).
- 8 *Depper v. Superior Court*, 74 Cal. App. 4th 15, 87 Cal. Rptr. 2d 563 (1st Dist. 1999).
- 9 *Thomas v. The Chase Manhattan Bank*, 857 So. 2d 989 (Fla. 4th DCA 2003).
- 10 *Woodham v. Atlanta Development Authority*, 335 Ga. App. 126, 779 S.E.2d 116 (2015), cert. denied, (Apr. 4, 2016).

- 11 D.H. v. Montana Fourth Judicial Dist. Court ex rel. County of Missoula, 2012 MT 106, 365 Mont. 82, 278  
P.3d 1010 (2012), as amended on reh'g, (June 19, 2012).
- 12 Zanghi v. State, 61 So. 3d 1263 (Fla. 4th DCA 2011).
- 13 People v. Flynn, 341 Ill. App. 3d 813, 275 Ill. Dec. 296, 792 N.E.2d 527 (2d Dist. 2003).
- 14 Hudson v. Texas Children's Hosp., 177 S.W.3d 232 (Tex. App. Houston 1st Dist. 2005).

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